THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21476 OF 2006

18.10.2006

Between:

Abdul Hadi, S/o.Abdul Allam
And another

… Petitioners

And

The Chief Executive Officer, A.P.State Wakf Board,
Haj House, Nampally, Hyderabad
And others

… Respondents

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ORDER:

The two petitioners are residents of Bhavanipuram area in Vijayawada. They are statedly persons interested in the affairs of Sarai Mosque (hereafter called, subject wakf) situated in Vijayawada, which owns a commercial complex known as Imdadghar, which is yielding rental income of Rs.25,00,000/-. The first respondent issued proceedings on 05.5.2005 appointing respondents 3 to 6 as members of the Managing Committee of subject wakf under Section 18 of the Wakf Act, 1995 (the Act, for brevity) for a period of two years. Aggrieved by the same, the present writ petition is filed.

The main contention of the petitioners as disclosed in the affidavit accompanying the writ petition as well as argued across the Bar by the learned Counsel for the petitioners, Sri K.V. Rajendra Prasad, is as follows. The first respondent had filed a suit being O.S.No.49 of 1957 on the file of the Court of Principal Subordinate Judge, Vijayawada, for framing the scheme. The said Court passed a preliminary decree on 11.12.1961 and later pursuant to the orders of this Court in C.M.A.No.537 of 1986, learned Subordinate Judge framed the scheme. As per clause III (2) of the said scheme, the Board of Trustees should consist of eleven (11) members out of which seven (7) persons belonging to Sunni section of Muslim community and four persons are to be appointed as members of Ex-officio. The petitioners allege that the first respondent appointed respondents 3 to 6 without inviting applications and without considering the scheme framed by the Civil Court in O.S.No.49 of 1957. They also allege that respondents 3 to 6 follow the principles of Muslim Personnel Law more in breach and, therefore, they are not qualified for being appointed to the management. In spite of the same, the first respondent appointed them, which cannot be sustained.

Opposing the writ petition learned Standing Counsel for A.P. State Wakf Board, Mr.Mohd. Vasi Ahmed, submits that the writ petition is filed challenging the order of the first respondent dated 05.5.2005,

after lapse of about 1½ year and, therefore, it is not maintainable. Secondly, he would urge that against any order/proceedings issued by the first respondent or any authority under the Act, the petitioner has effective alternative remedy under Section 83(2) of the Act to the A.P. State Wakf Tribunal, where he can raise all the issues regarding personal habits and conduct of respondents 3 to 6.

This Court has repeatedly held that the Parliament has taken sufficient care to provide remedies for redressal of grievances of the persons interested in the constitution, management and regulation of Wakf under Muslim Law. Therefore, any person aggrieved by any order has to necessarily seek remedy before duly constituted Wakf Tribunal under Section 83(1) of the Act. If ultimately any adverse order is passed, such order is amenable to revisional jurisdiction under Section 83(9) of the Act. Bypassing such procedure, a writ petition cannot be filed nor this Court can entertain such writ petition, by reason of the judgments of two Division Benches of this Court, to which I was a member, in **M.Bikshapathi v Government of Andhra Pradesh**[1] and **Allauddin Charities and Zakath Wakf v Hameed Ali**[2].

In **Allauddin Charities and Zakath Wakf** (supra), dealing with this aspect, the Division Bench of this Court held as under.

> Under sub-section (5) of Section 83, the Tribunal constituted under sub-section (1) of Section 83 shall be deemed to be a civil Court and shall have the same powers as may be exercised by a Civil Court under the Code of Civil Procedure while trying a suit or executing a decree or order. The jurisdiction of the Civil Court is specifically barred under Section 85 of the Act. Therefore, when the Tribunal has been conferred with the power to determine any dispute, question or other matter relating to a Wakf or Wakf property under the Act and acts as a Civil Court for all purposes, this Court, in exercise of the jurisdiction under Article 226 of the Constitution, cannot permit a party to bypass such statutory remedy and assign itself the role of statutory authority or Tribunal by dealing with the disputed questions of fact or title. It is only after the issue or dispute is determined by the Tribunal at the first instance, the High Court, in exercise of the power under the proviso to sub-section (9) of Section 83 of the Act gets jurisdiction and can go into the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other

order it may think fit. We are, therefore, of the view that unless the party aggrieved of the orders of the CEO has availed of the alternative remedy available to him under the Statute and the Tribunal has determined the issue or dispute or the nature of the property as provided under the provisions of the Act, this Court, cannot go into question of validity of the orders passed by the Chief Executive Officer.

The writ petition is, therefore, misconceived and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

October 18, 2006
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[1] 1999 (6) ALD 270 (DB)

[2] 2002 (1) ALD 67 (DB)